

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

TRUSTEES OF THE BRICKLAYERS  
AND ALLIED CRAFTSMEN LOCAL 56  
FRINGE BENEFIT FUND,

Plaintiffs,

v.

COMPLETE MASONRY SOLUTIONS, INC.,  
AN ILLINOIS CORPORATION, AND DOUG  
WINIKATES, INDIVIDUALLY,

Defendants.

Case No. **FILED: APRIL 8, 2008**  
**08CV1981** TG  
Judge **JUDGE DOW**  
**MAGISTRATE JUDGE COX**  
Magistrate Judge

**COMPLAINT**

Plaintiffs, by their attorneys, DONALD D. SCHWARTZ and ARNOLD AND KADJAN, complain against Defendant, **COMPLETE MASONRY SOLUTIONS, INC., AN ILLINOIS CORPORATION, and DOUG WINIKATES, INDIVIDUALLY**, as follows:

**COUNT I**

1. (a) Jurisdiction of this cause is based on Section 301 of the National Labor Relations Act, 29 U.S. C. Section 185(a) as amended.

(b) Jurisdiction of this cause is based upon Section 502 of the Employee Retirement Security Act of 1974, 29 U.S.C. Section 1132, 1145 ("ERISA"), as amended.

2. Venue is founded pursuant to 29 U.S.C. Section 1132(e)(2) in this District where the Funds, as described in Paragraph 3, are administered.

3. (a) The Plaintiffs in this count are TRUSTEES OF THE BRICKLAYERS AND ALLIED CRAFTSMEN LOCAL 56 PENSION, WELFARE, APPRENTICESHIP, AND INDUSTRY ADVANCEMENT FUND, ("the Funds"), and have standing to sue pursuant to 29

U.S.C. Section 1132(d)(1).

(b) The Funds have been established pursuant to collective bargaining agreements previously entered into between the BRICKLAYERS AND ALLIED CRAFTSMEN LOCAL 56 (the "Union") and certain employer associations whose employees are covered by the collective bargaining agreement with the Union.

(c) The Funds are maintained and administered in accordance with and pursuant to the provisions of the National Labor Relations Act, as amended, and other applicable state and federal laws and also pursuant to the terms and provisions of the agreements and Declarations of Trust which establish the Funds.

4. (a) Defendant, **COMPLETE MASONRY SOLUTIONS, INC., an Illinois corporation, ("COMPLETE")** is an Illinois corporation and is an employer engaged in an industry affecting commerce with its principal place of business located within this Court's jurisdiction.

(b) **COMPLETE** is an employer engaged in an industry affecting commerce.

5. Since on or about **March 1, 2006**, **COMPLETE** has entered into successive collective bargaining agreements with the Union pursuant to which it is required to make periodic contributions to the Bricklayers Local No. 56 Funds.

6. **COMPLETE** is required to make contributions to the Funds on behalf of its Glaziers employees and, when given reasonable notice by Plaintiffs or their representatives, to submit all necessary books and records to Plaintiffs' accountant for the purpose of determining whether or not it is in compliance with its obligation to contribute to the Funds.

7. Plaintiffs are advised and believe that for **January 1, 2007 to the present**, **COMPLETE** has failed to make some of the contributions, from time to time required to be paid

by it to the Funds pursuant to the terms of the Trust Agreements by which it is bound, all in violation of its contractual obligations and its obligations under applicable state and federal statutes.

**WHEREFORE**, Plaintiffs pray for relief as follows:

A. **COMPLETE** be ordered to submit to an audit for **January 1, 2007 to the present**.

B. Judgment be entered on any amounts found to be due on the audit.

C. Plaintiffs be awarded their costs herein, including reasonable attorneys' fees and costs incurred in the prosecution of this action, together with liquidated damages in the amount of 20%, all as provided in the applicable agreements and ERISA Section 502(g)(2).

D. **COMPLETE** be enjoined from violating the terms of the collective bargaining agreements and Trust Agreements by failing to make timely payments to the Funds and be ordered to resume making those payments.

E. This Court grant Plaintiffs such other and further relief as it may deem appropriate under the circumstances.

## **COUNT II**

1-7 Plaintiffs repeat and reallege Paragraphs 1-7 of Count I as Paragraphs 1-7 of Count II.

8. Defendant, **DOUG WINIKATES ("WINIKATES")** is, on information and belief owner and operator of Defendant, **COMPLETE**.

9. **WINIKATES** co-signed and guaranteed the Installment Note entered into by **COMPLETE**. (Exhibit B)

10. The Note is in default since January 1, 2008. There is an unpaid balance of **\$11,187.52** on the Bricklayers Local No. 56 Note.

11. Default on the Note accelerates the entire balance due.
12. **WINIKATES** has failed to make payment despite repeated demand for payment.

**WHEREFORE**, Plaintiffs pray for judgment against Defendant, **WINIKATES** in the amount of **\$11,187.52** for the Bricklayers Local No. 56.

Respectfully submitted,

TRUSTEES OF BRICKLAYERS AND ALLIED  
CRAFTSMEN LOCAL 56 FRINGE BENEFIT  
FUND,

By: s/ Donald D. Schwartz  
One of their Attorneys

Donald D. Schwartz  
**ARNOLD AND KADJAN**  
19 West Jackson Blvd., Suite 300  
Chicago, Illinois 60604  
(312) 236-0415





JAN. 12. 2007 10:34 AM TO THE BAC LOCAL 56 THE FIRST PAYEE UNDER THE UNION AGREEMENT NO. 340 P. 3  
Case 1:08-cv-01981 Document 1 Filed 04/08/2008 Page 6 of 7  
INSTITUTE, ILLINOIS MASONRY INSTITUTE PROMOTION TRUST, MASONRY INDUSTRY ADVANCEMENT FUND, ANY OF THEIR SUCCESSORS, OR AN  
INDUSTRY AND/OR PROMOTION FUND WHICH MAY AT ANY TIME BE IDENTIFIED IN ANY ASSOCIATION AGREEMENT ("INDUSTRY OR PROMOTION FUNDS")  
THE DISTRICT COUNCIL, AT ITS SOLE DISCRETION, SHALL HAVE THE RIGHT AT ANY TIME, AND FROM TIME TO TIME, TO ALLOCATE AND REALLOCATE ALL  
OR ANY PART OF THE AMOUNT OF SUCH CONTRIBUTIONS TO OR AMONG WAGES, CONTRIBUTIONS TO ONE OR MORE SUCH INDUSTRY OR PROMOTION  
FUNDS, OR ANY COMBINATION THEREOF. ANY SUCH ALLOCATION OR REALLOCATION SHALL BE EFFECTIVE 30 DAYS AFTER THE DISTRICT COUNCIL MAIL  
WRITTEN NOTICE THEREOF TO THE EMPLOYER. THE PARTIES AGREE THAT, INASMUCH AS THE TOTAL AMOUNT OF WAGES AND FRINGE BENEFIT  
CONTRIBUTIONS WHICH THE EMPLOYER IS OBLIGATED TO PAY SHALL REMAIN UNCHANGED, ANY SUCH ALLOCATION OR REALLOCATION BETWEEN  
INDUSTRY OR PROMOTION FUND CONTRIBUTIONS AND WAGES, OR BETWEEN OR AMONG INDUSTRY OR PROMOTION FUNDS, SHALL NOT BE DEEMED TO  
RESULT IN A MORE FAVORABLE WAGE OR ECONOMIC FRINGE BENEFIT RATE FOR PURPOSES OF "MOST FAVORED NATION" PROVISIONS OF THE  
MEMORANDUM OF UNDERSTANDING OR ASSOCIATION AGREEMENTS.

7. ANY MEMORANDUM OF UNDERSTANDING OR OTHER AGREEMENT PREVIOUSLY EXECUTED BY THE PARTIES IS SUPERSEDED BY THE  
MEMORANDUM OF UNDERSTANDING.

► DATED THIS 1<sup>st</sup> DAY OF March, 2006

COMPANY NAME: Complete Masonry Solutions

CONTRACT SIGNED BY: Susan Winiates

PLEASE PRINT NAME: Susan Winiates

TITLE: Secretary (PRINT)

ILLINOIS DISTRICT COUNCIL NO. 1 OF THE  
INTERNATIONAL UNION OF BRICKLAYERS AND  
ALLIED CRAFTWORKERS, AFL-CIO

BY: \_\_\_\_\_  
PRESIDENT OF ILLINOIS DISTRICT COUNCIL NO. 1

RECEIVED BY: [Signature]  
UNION REPRESENTATIVE

NOTE: NOT VALID UNLESS SIGNED BY THE  
DISTRICT COUNCIL PRESIDENT

JOB LOCATION: Office

INSTALLMENT NOTE\$14,916.67August 17, 2007

For Value Received, the undersigned promises to pay to the order of \_\_\_\_\_  
BRICKLAYERS LOCAL #56 PENSION and WELFARE FUNDS the principal sum of  
THIRTEEN THOUSAND FIVE HUNDRED SIXTY and 61/100 (\$13,560.61) DOLLARS

Payable in installments as follows:

ONE THOUSAND TWO HUNDRED FOURTY THREE AND 05/100 (\$1,243.05) Dollars  
on the 1<sup>ST</sup> day of SEPTEMBER 2007  
ONE THOUSAND TWO HUNDRED FOURTY THREE AND 05/100 (\$1,243.05) Dollars  
on the 1<sup>ST</sup> day of each month beginning on the 1<sup>ST</sup> day of OCTOBER 2007  
for 9 month(s) succeeding, and a final payment of \_\_\_\_\_ Dollars  
ONE THOUSAND TWO HUNDRED FOURTY THREE AND 05/100 (\$1,243.05) Dollars  
on the 1<sup>st</sup> day AUGUST 2008 with interest on the balance of principal remaining from time to time unpaid at the rate of  
10% per cent per annum, payable on the due dates for installments of principal as aforesaid.

All payments on account of the indebtedness represented by this Note shall be applied first to accrued and unpaid interest and the remainder to principal. Any installments of principal not paid when due shall bear interest after maturity at the rate of 18 per cent per annum. Payments of both principal and interest shall be made at ARNOLD AND KADJAN, 19 WEST JACKSON BOULEVARD, CHICAGO, IL 60604-3958 or such other place as the legal holder hereof may from time to time in writing appoint.

The payment of this Note is secured by a Security Agreement in the nature of a chattel mortgage, bearing even date herewith, from the undersigned to \_\_\_\_\_  
on personal property \_\_\_\_\_  
in the County of \_\_\_\_\_, Illinois. The undersigned's residence (chief place of business) is at \_\_\_\_\_  
\_\_\_\_\_, Illinois.

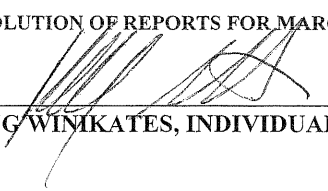
At the election of the payee or legal holder hereof and without notice, the principal sum remaining unpaid hereon, together with accrued interest thereon, shall become at once due and payable at the place of payment aforesaid in case of default in the payment, when due, of any installment of principal or interest, or any portion thereof, in accordance with the terms hereof or in case of default as defined in said Security Agreement. In the event of default, the payee or legal holder hereof shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

The undersigned hereby authorizes, irrevocably, any attorney of any court of record to appear for the undersigned in such court, in term time or vacation, at any time after default in the payment of any installment of the principal hereof, and confess judgment without process in favor of the payee or holder of this Note for such amount as may appear to be unpaid thereon, together with reasonable costs of collection including reasonable attorney's fees, and to waive and release all errors which may intervene in any such proceedings, and consent to immediate execution upon such judgment, hereby ratifying and confirming all that said attorney may do by virtue hereof.

If this Note is signed by more than one person or entity, the obligations and authorizations hereunder shall be joint and several.

All parties hereto severally waive presentment for payment, notice of dishonor and protest.

**RESOLUTION OF REPORTS FOR MARCH 2007 THROUGH MAY 2007**

  
**DOUG WINIKATES, INDIVIDUALLY**

**COMPLETE MASONRY SOLUTIONS  
P. O. BOX 902  
ISLAND LAKE, ILLINOIS 60042  
815-477-0155 (phone)**

The maker of this Note acknowledges the above indebtedness represents fringe benefit contributions and other costs and charges due and owing pursuant to applicable provisions of the Employee Retirement Income and Security Act, 29 U.S.C. 1145.

**CAUTION:** Consult a lawyer before using or acting under this form. *All warranties, including merchantability and fitness, are excluded.*

5082-65

EVIDENCE B